diction of the American Foreign Insurance Association; the trial court judgment is reversed insofar as it sustained the exceptions filed by all other defendants; and this case is remanded for further proceedings not inconsistent with the views expressed herein. The costs of this appeal are to be paid by the defendants-appellees other than the American Foreign Insurance Association; all other costs to await the final disposition of these proceedings.

Affirmed in part; reversed and remanded in part.

HOOD, Judge (dissenting).

I agree with the majority that Louisiana has a legitimate interest in providing every citizen of this state who sustains an injury with a forum in which his claim arising out of that injury may be adjudged. I also agree that under LSA-R.S. 13:3471, as amended by Act 32 of 1960, the courts of Louisiana are permitted to exercise the full potential of jurisdiction, in personam, over foreign corporations allowed by the decisions of the United States Supreme Court in International Shoe Company v. State of Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95, and McGee v. International Life Insurance Company, 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223.

I am not able to agree wiht my sincere colleagues, however, in their conclusion that the defendant employer, Seacat Offshore Drilling Company, a foreign corporation not qualified to do business in this state and having no office, agent or employee here, has had sufficient contact with the State of Louisiana to make it amenable to the

jurisdiction of a court of this state through substituted service of process.

I realize that the principles of law originally set out in the landmark case of Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed. 565, have been greatly eroded by the decisions rendered in the International Shoe Company and McGee cases. In my opinion, however, the United States Supreme Court in those cases did not intend to completely wipe out all of the rules stated in Pennoyer v. Neff, but that it intended merely to hold that the rigid rules set out in that case could be modified or relaxed under certain conditions or circumstances. I feel that the principles of law announced in Pennoyer v. Neff must still be applied, except where they have been specifically modified by the recent Supreme Court decisions. As stated by the court in Delray Beach Aviation Corporation v. Mooney Aircraft, Inc., La.App. 5 Cir., 332 F.2d 135, "* * * although the door of non-resident jurisdiction has been opened wider by International Shoe and McGee, it has not been removed from its hinges." If the majority opinion in the instant suit is allowed to stand, I believe that it will have the effect of completely wiping out any further practical effect of Pennoyer v. Neff.

In the instant suit the only contact which Seacat Offshore has had with Louisiana is on one occasion when it participated with at least six other companies in publishing one advertisement in a Lafayette newspaper, and thereafter in interviewing prospective applicants for overseas employment. Although one of the two persons who did the interviewing in Lafayette was a stockholder in

Seacat Offshore, as well as a stockholder in other companies which also were engaged in overseas drilling operations, the evidence convinces me that the advertisement and interview were handled and conducted by Southeastern Drilling Company, and that the only connection which Seacat Offshore had with that project was in being billed later for a proportionate part of the expense which was incurred in the advertisement and interview and in paying its share of that expense. The purpose of that advertisement and interview was not to obtain an employee for any particular company, but was simply to obtain a number of applications for overseas drilling employment in order that these applications could be kept on file in Dallas, Texas, for future reference and use in the event any of the participating companies needed an employee at a later date.

Plaintiff's general application for employment of that type by some company was submitted on February 29, 1960, and it apparently remained on file in Southeastern's office in Dallas for several weeks before Seacat Offshore, needing an employee, asked plaintiff to go to Dallas to discuss the matter. In response to that request plaintiff went to Dallas, and then for the first time discussed with officers of Seacat Offshore the matter of employment by that company. The interview was conducted in Dallas, Texas, the contract was completed in Texas, the contract provides that in case the employee is injured the employer will pay benefits equal in all respects to those accorded under the Texas workmen's compensation law, and I think the evidence clearly shows that the parties intended and expected the contract to be governed by Texas law.

It is true that while in Dallas, plaintiff was informed that he would have to pass a physical examination before he could be employed, and in order to satisfy that requirement plaintiff was examined by a New Orleans doctor. Also, a copy of the completed contract, together with plane tickets and a passport, were mailed by Seacat Offshore from its Dallas office to plaintiff in Louisiana, and that plaintiff boarded a plane in New Orleans for Kuwait. The fact that plaintiff received a physical examination in Louisiana and that he boarded a plane in New Orleans for the overseas destination, however, certainly cannot be considered as contacts by Seacat Offshore with the State of Louisiana.

The majority holds that plaintiff's wages "commenced at the very least on this date (the day he departed from the United States), while he was still in Louisiana." The contract of employment provides that plaintiff's salary "shall commence on the date employee leaves the United States and shall continue until employee returns to the United States." While the majority may be technically correct in holding that his pay began while he was still in Louisiana, that is for that portion of the day which elapsed before he actually boarded the plane, I do not believe that a conclusion or inference is justified that any part of plaintiff's employment was performed in Louisiana or that the employer, Seacat Offshore, conducted any business operations at all in this state.

Under my appreciation of the facts, therefore, the only contact which the employer, Seacat Offshore, has had with Louisiana was on the one occasion when it participated in

the advertisement and interview in Lafayette, and even that did not have a substantial connection with the later employment and injury of plaintiff.

The following significant language was used by the United States Supreme Court in the International Shoe Company case:

> "* * * due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, *he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'*"
>
> * * * * * * * *
>
> "'Presence' in the state in this sense has never been doubted *when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on*, even though no consent to be sued or authorization to an agent to accept service of process has been given. (citations omitted) Conversely it has been generally recognized that *the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there.*" (66 S.Ct. 154, 158)

In the McGee case, the court, citing and quoting from the International Shoe Company decision, again held that in order to subject a defendant to a judgment, in personam, if he be not present within the territory of the forum, it is essential that "he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" In that case the court concluded that the non-resident defendant corporation was amenable to the jurisdiction of the California court because "the suit was based on a contract which had substantial connection with that State." The facts in the McGee case, however, showed that the non-resident defendant had solicited a re-insurance agreement with a resident of California, that the offer was accepted in California, that insurance premiums were mailed from that state until the insured's death, and that if plaintiff were not permitted to sue in California he would effectively be deprived of an opportunity to have his claim adjudged. See comments relating to McGee case in Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283.

In the instant suit, unlike the facts in the McGee case, the contract was not solicited or entered into in Louisiana, plaintiff did not remain in Louisiana and continue to have business relations with defendant after the contract was entered into, and in estimating or balancing inconveniences plaintiff in this suit would not be prejudiced or deprived of his right to have his claim adjudged by being required to institute his suit in Texas instead of Louisiana. In my opinion, therefore, the McGee case is not applicable to the instant suit.

In Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, the Supreme Court held that a Delaware trust company, which had no office in Florida and transacted no business there, could *not* be subjected to the jurisdiction of a Florida court through substituted service of process, in spite of the fact that the trust company had a number of contacts with the State of Florida relating to the very agreement which was the subject of the suit. In commenting upon the contacts which the defendant trust company had had with Florida, the court said:

> "The agreement was executed in Delaware by a trust company incorporated in that State and a settlor domiciled in Pennsylvania. The first relationship Florida had to the agreement was years later when the settlor became domiciled there, and the trustee remitted the trust income to her in that State. From Florida Mrs. Donner carried on several bits of trust administration that may be compared to the mailing of premiums in McGee. But the record discloses no instance in which the trustee performed any acts in Florida that bear the same relationship to the agreement as the solicitation in McGee. Consequently, this suit cannot be said to be one to enforce an obligation that arose from a privilege the defendant exercised in Florida."

It appears to me that the contacts which the trust company had with the State of Florida in that case were considerably more substantial and significant than were the contacts which Seacat Offshore has had with Louisiana in the instant suit. And yet the court held that they were

not sufficient to subject the non-resident defendant to the jurisdiction of the Florida court.

Finally, in Buckley v. New York Times Company, et al, 338 F.2d 470, the United States Court of Appeals for the Fifth Circuit held:

> "The law is also clear that sporadic news gathering by reporters on special assignment and the *solicitation of a small amount of advertising do not constitute doing business nor engaging in business activity.* Whitaker v. McFadden Publications (1939), 70 App. D.C. 165, 105 F.2d 44. The principle of Pennoyer v. Neff, 95 U.S. 714, 24 L. Ed. 565, to the effect that jurisdiction of any court to render an in personam judgment depends upon a de facto power over the defendant's person, and 'presence' within the territorial jurisdiction of a court is a prerequisite to the court's being able to bind by judgment, has been changed by International Shoe and McGee *only to the extent that 'presence' does not mean actual presence in the ordinary sense but 'presence' in the constitutional sense; this 'presence' in the constitutional sense depends upon a finding from the facts that 'minimum contacts,' through a business activity, exist with the forum territory to a degree that the exercise of jurisdiction by maintenance of the case does not 'offend "traditional notions of fair play and substantial justice."'"*

Considering all of these authorities, I am convinced that Seacat Offshore has not had the "minimal contacts" with

the State of Louisiana which are a prerequisite to the state court's right to exercise jurisdiction over it. I think the exercise of jurisdiction over Seacat Offshore by the Louisiana court in this case would "offend traditional notions of fair play and substantial justice."

The majority reasons however, that although the activities of Seacat Offshore in Louisiana have not been continuous and systematic (and thus are not sufficient to satisfy the requirements of the International Shoe Company case) there is a substantial connection between plaintiff's claim and the one isolated instance in which Seacat Offshore did have a contact with Louisiana, and thus under the authority of the McGee case the Louisiana court may maintain jurisdiction. I cannot agree with that reasoning.

As I have already pointed out, I think the McGee case is not applicable because of a substantial difference between the facts of that case and those presented here. I also must disagree with the majority in its conclusion that the advertisement and interview conducted in Lafayette, and in which Seacat Offshore participated as above set out, was a "business activity" of this drilling company which had a substantial connection between the injury which plaintiff allegedly sustained while working in Kuwait.

I agree with the majority that in determining whether the Louisiana court has jurisdiction over the non-resident defendant it is permissible to consider and to balance the inconveniences. As stated in the International Shoe Company case:

> "An 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection. Hutchinson v. Chase & Gilbert, supra [2 Cir.], 45 F.2d [139] 141."

If I felt that there was any merit to the observation that plaintiff would have to go to Panama or to Kuwait to sue, then I would agree that the defendant should be subjected to the jurisdiction of the Louisiana court because otherwise plaintiff would be effectively deprived of his right to have his claim adjudged. But, I am convinced that plaintiff can maintain a suit against his employer, Seacat Offshore, in Texas, and considering the inconveniences of all parties I feel that the least injustice would be done by observing the rules of Pennoyer v. Neff and requiring that the suit be instituted there.

The evidence shows clearly, I think, that Seacat Offshore maintained an office in Dallas, Texas. Mr. Taylor, the employee and agent of Seacat Offshore who signed the employment contract in behalf of that company and who managed much of Seacat Offshore's business in the United States, maintained an office for that purpose in Dallas. It was in that office that plaintiff was interviewed for the job by Mr. Taylor, checks drawn on Seacat Offshore were issued, signed and mailed from that office, the contract of employment was completed there, and it was from that office that the copy of the contract and the plane ticket were mailed to plaintiff. Plaintiff testified that when he decided to sign the contract he "called Mr. Maddox and told him I accepted the job and I was signing

the contract." Mr. Maddox obviously was acting for and in behalf of Seacat Offshore. He was at his office in Dallas, and plaintiff apparently had no difficulty in locating this agent of Seacat Offshore in that city. No one in this suit has contended, so far as I have been able to find, that Seacat Offshore did not maintain an office in Texas. On the contrary, counsel for Seacat Offshore in their original brief specifically concede that it does maintain an office there. In that brief counsel state:

> "In this instance the parties contracted in the light of Texas law by express provision, the contract itself was consummated in Texas, *where Seacat has an office,* and the work was performed in Kuwait."

In view of the fact that Seacat Offshore clearly maintains an office and conducts continuous business activities in Texas, I can see no logical reason which could be assigned for holding that plaintiff could not maintain a suit there. I agree that it would be more convenient to plaintiff if he were permitted to sue in Louisiana. On the other hand, I am certain that it would be more convenient to defendants if the suit were filed in Texas. It seems to me, however, that the inconveniences are somewhat equally balanced and under those circumstances I think the rules announced in Pennoyer v. Neff are applicable.

If the opinion rendered by the majority in this case is permitted to stand, then it seems to me that any Louisiana merchant who sends a buyer occasionally to New York to buy merchandise could be subjected to the juris-

diction, in personam, of a New York court on the ground that he has had sufficient contact with that state to warrant the exercise of that jurisdiction. Under the majority's interpretation of the law it may be that the Louisiana merchant could be subjected to the jurisdiction of another state solely because he ordered goods by mail from a person in that state or sold or shipped merchandise to a resident of such state. I do not believe that our Supreme Court intended that in such circumstances the defendant should be compelled to go to a distant state to defend an action brought against him there. If the views expressed by the majority in this case are finally determined to be correct, then by the same reasoning it must logically follow that a Louisiana businessman who enters into any type of business transaction with a resident of another state may be required to go to that state to defend a personal action which may be instituted against him there by a resident of that state, simply because that state has an interest in providing its own citizen with a forum and because it is more convenient for the plaintiff to maintain a suit in his own state than at the defendant's domicile. I do not feel that we should make such a radical departure from our "traditional notions of fair play and substantial justice."

I also think the majority erred in refusing to affirm the judgment of the trial court insofar as it maintained the exception filed by Southeastern Drilling Company and dismissed the suit as to that defendant. The issue of whether Southeastern was an employer of plaintiff, or whether it exercised control over plaintiff or was engaged in a joint venture with any of the other defendants, was

raised by the exceptions and by the motion for summary judgment which were filed by Southeastern and its insurer, and that issue was fully tried and disposed of by the lower court. The majority concedes that the evidence is not sufficient to show that Southeastern exercised any control over plaintiff or that the parties were engaged in a joint enterprise, but nevertheless it reverses the decision of the trial court and remands the case for trial. In my opinion, Southeastern and its insurer are entitled to a judgment dismissing the suit as to them.

The reasons which I have assigned for dismissing the suit as to Seacat Offshore apply also to Seacat Marine. This last named foreign corporation also has not had the "minimal contacts" with Louisiana which are a prerequisite to subject it to the jurisdiction of a court of this state.

For these reasons, I respectfully dissent from the majority opinion.

On Applications for Rehearing.

En Banc. Rehearings denied.

HOOD, J., is of the opinion that a rehearing should be granted.

61

Cleophile BABINEAUX, Jr.

v.

The SOUTHEASTERN DRILLING CORPORATION et al.

No. 47652.

Supreme Court of Louisiana.

March 29, 1965.

In re: Seacat Offshore Drilling Corporation applying for certiorari, or writ of review, to the Court of Appeal, Third Circuit, Parish of Lafayette. 170 So.2d 518.

Writ refused. The ruling on the plea to the jurisdiction in personam is correct. In all other respects the applicant has an adequate remedy by appeal in the event of an adverse judgment on the merits.

Cleophile BABINEAUX

v.

The SOUTHEASTERN DRILLING CORPORATION et al.

No 47655.

Supreme Court of Louisiana.

March 29, 1965.

In re: Seacat Marine Drilling Company (Persian Gulf) S. A. applying for certiorari, or writ of review, to the Court of Appeal, Third Circuit, Parish of Lafayette. 170 So.2d 518.

Writ refused. The ruling on the plea to the jurisdiction in personam is correct. In all other respects the applicant has an adequate remedy by appeal in the event of an adverse judgment on the merits.

END